

Application No. 10/667,007  
Preliminary Amendment dated January 13, 2006  
Reply to Office Action of September 13, 2005  
Docket No. P5655/3 (102-490)  
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### **REMARKS**

Reconsideration of the application is respectfully requested.

Claims 1, 2, 4-10 and 12-21 are in the application. With this amendment, claims 4 and 5 have been amended, claim 3 has been canceled, and claim 21 has been added.

In the Official Action, the Examiner indicated that the Declaration under 37 CFR §1.131 filed on June 27, 2005 was ineffective to overcome Bloom et al. (U.S. Published Patent Application No. 2004/0108294). The Examiner noted that no Exhibit A was included with the Declaration. Attached hereto is another copy of the Declaration including Exhibit A. Reconsideration of the Declaration is respectfully requested in view of Exhibit A.

The Examiner rejected claims 1-3, 7, 12, 13-17, 19 and 20 under 35 U.S.C. §102(b) as being anticipated by Doi (U.S. Patent No. 4,880,127).

Doi is directed to a composite vessel lid including an outer lid 1 and an inner lid 20. Inner lid 20 is supported by holding projections 7 of the outer lid 1, as shown in Fig. 4. (Column 3, lines 38-41). Projections 30 may also be formed on the outer lid 1 to define a gas path 31. (Column 4, lines 3-4; Fig. 3). The gas path 31 allows for venting from a mouth of a container 40, as shown in Fig. 4. (Column 4, lines 5-16).

Claim 1, the only independent claim of the subject application, is directed to a cap assembly including "a cap body having a top wall, an orifice formed in said top wall, and a depending annular skirt for screw attachment to said neck portion of said container"; and, "a plug seal attached to said orifice of said cap body". In contrast to claim 1, the inner lid 20 of Doi is attached to the outer lid 1 at holding projections 7 and not at the open orifice defined in the outer lid 1. In addition, there is no disclosure or suggestion to modify Doi to have the inner lid 20

connected to the open orifice. It is respectfully submitted that claim 1, along with dependent claims 2, 7, 12, 13-17, 19 and 20, are patentable over Doi.

The Examiner rejected claims 1, 2, 12, 13-17, 19 and 20 under 35 U.S.C. §102(b) as being anticipated by Takano (U.S. Patent No. 5,984,124).

Takano is directed to a cap C including a cap 6 and a packing 9. (Column 5, lines 30-42). The cap 6 includes a solid top wall 1, as shown in Fig. 1.

As discussed above, claim 1 is directed to a cap assembly including "a plug seal attached to said orifice of said cap body". The cap 6 of Takano does not include an orifice. Accordingly, the packing 9 is not attached to an orifice formed in the top wall of the cap 6. It is respectfully submitted that claims 1, 2, 12, 13-17, 19 and 20 are patentable over Takano.

The Examiner rejected claims 1-7 and 12-20 under 35 U.S.C. §102(e) as being allegedly anticipated by Bloom et al. As indicated above, the Declaration under 37 C.F.R. §1.131 is being submitted herewith in its entirety. The Declaration is being relied upon to remove Bloom et al. as prior art and to overcome this rejection.

The Examiner rejected claims 1-7, 12-17, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over Gach et al. (U.S. Patent No. 4,747,500) in view of Doi. The Examiner admitted that "Gach et al. does not disclose a projecting ring located on an undersurface of the cap body for engagement with the plug seal". The Examiner relied on Doi for overcoming this deficiency and asserted: "... it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in the Gach et al. invention with a projecting ring . . . as taught by Doi, in order to facilitate of air venting for the cap."

Gach et al. is directed to a tamper indicating transparent closure. With reference to the embodiments of Figures 13-15, cited by the Examiner, closure assemblies are provided each including a body member 162/206, insert member 176/210, and seal element 200. The seal element 200 is firmly affixed to the lip of a container. (Column 7, lines 3-7; column 7, lines 57-61). The seal element can be destructible or not destructible. With a destructible configuration, the seal element is also secured to the insert member 176/210. (Column 7, lines 8-13; column 8, lines 16-19). With a non-destructible configuration, the seal element 200 is not secured to the insert member 176/210; as such, the body member 162/206 and the insert member 176/210 are removed from the seal element 200, with the seal element 200 being fully intact. (Column 7, lines 14-20; column 7, lines 64-65). With a destructible version of the seal element 200, portions of the seal element 200 are forcibly removed with the insert member 176/210. In both configurations (destructible and non-destructible), portions of the seal member affixed to the lip of the container remain after cap removal.

It is respectfully submitted that there is no suggestion or motivation to modify Gach et al., as suggested by the Examiner, to include the projections of Doi. As discussed above, the projections 30 of Doi are provided to define gas paths 31 for the mouth portion 40 of a container. In Doi, escaping gases pass over the lip of the container, around the outer edge of the inner lid 20, and through the gas paths 31. However, the seal element 200 in Gach et al. prevents gas from passing between the seal element 200 and the lip of the container. Doi provides an inner lid 20 which is not affixed to the container and allows for gas flow between the inner lid 20 and the mouth of the container. In Gach et al., affixed portions of the seal element 200 prevent gas from passing between the seal element 200 and the lip of the container.

The Examiner relied on venting as the basis for modifying Gach et al. In the non-destructible version of the seal element 200 in Gach et al., venting of the container through the cap is not a consideration. As for the destructive version of the seal element 200, portions of the

seal element 200 located interiorly of the lip of the container are removed and provide venting with removal of the cap. One skilled in the art would not be motivated to provide Gach et al. with the projections 30 of Doi to define gas paths 31 for venting. It is respectfully submitted that Gach et al. and Doi are not combinable as suggested by the Examiner. Accordingly, it is respectfully submitted that there is no *prima facie* showing of obviousness based on the Gach et al. and Doi references.

The Examiner rejected claims 1-3, 5, 7, 11-16, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over Magnani (U.S. Patent No. 3,924,772) in view of Doi. The Examiner admitted that "Magnani does not disclose a projecting ring located on an undersurface of the cap body for engagement with the plug seal." The Examiner relied upon Doi to overcome this deficiency.

Magnani is directed to an airtight container cap which includes a ring-nut 1. The ring-nut 1 is disclosed as being of plastic material (column 2, lines 53-55) and includes an upper circular hole 2. A glass stopper 8 is mounted within the hole 2 of the ring-nut 1. (Column 2, line 65). Glass stopper 8 includes a groove 9 for coupling with the hole 2 of ring-nut 1. (Column 3, lines 1-4).

As discussed above, Doi provides projections 30 to define gas paths 31, with gas passing through the gas paths 31 escaping through the orifice defined in the outer lid 1. With Magnani, the glass stopper 8 is coupled to the ring-nut 1 at the circular hole 2. With the groove 9, a snap-fit connection is formed between the glass stopper 8 and the ring-nut 1. As shown in Fig. 3, the ring-nut 1 engages tightly with the glass stopper 8.

Although, Magnani defines a hole 2 in the ring-nut 1, there does not appear to be a gas flow path between the ring-nut 1 and the glass stopper 8. A line of contact is defined at the glass/plastic interface of the glass stopper 8 and the ring-nut 1 which acts as a barrier against venting through the hole 2 in the ring-nut 1. Accordingly, one skilled in the art would not be motivated to provide the projections of Doi on the ring-nut 1 of Magnani. With the Examiner's hypothetical combination, the gas paths 31 defined by the projections 30 would be blind passageways with no provision for gas to escape through the hole 2. Rather, gas would vent through the bottom of the ring-nut 1 or through the slot 3 formed in a side of the ring-nut 1. Accordingly, the gas paths 31 would serve no purpose in the Magnani device, and there is no desirability to modify the Magnani reference as suggested by the Examiner. It is respectfully submitted that claims 1, 2, 5, 7, 11-16, 19 and 20 are patentable over Magnani and Doi, each taken alone or in combination.

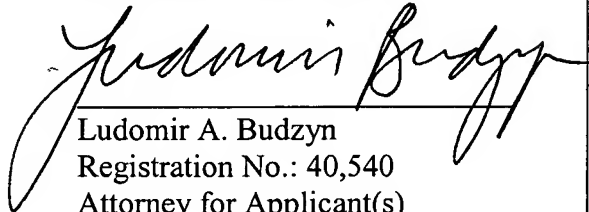
The Examiner rejected claims 7-10 under 35 U.S.C. §103(a) as being unpatentable over Magnani in view of Doi or Gach et al. in view of Doi and further in view of Luenser et al. (U.S. Patent No. 4,462,502) or McIntosh (U.S. Patent No. 4,423,821). The Examiner admitted that neither Magnani nor Gach et al. "disclose the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove." The Examiner cited Luenser et al. or McIntosh for overcoming this deficiency.

Luenser et al. and McIntosh are each directed to a closure with a liner. However, neither reference overcomes the deficiencies noted above of Gach et al. and Magnani. With claims 7-10 depending from claim 1, it is respectfully submitted that claims 7-10 are also patentable.

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Favorable action is earnestly solicited. If there are any questions or additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,

  
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